

OLL 85-0363/3
20 February 1985

MEMORANDUM FOR: See Distribution

VIA: Acting Chief, Liaison Division^{*}

FROM:
Liaison Division, OLL

SUBJECT: Retirement: Senate Plans

1. Senator Paul S. Tribble, Jr. (R., VA) has introduced a bill (S202) allowing Federal workers to contribute up to 5 percent of their salaries into a tax-sheltered account, matched by an equal contribution from the government. A copy of the bill and introductory comments are attached.

2. This bill has been referred to Senator Stevens' Subcommittee on Post Office/Civil Service where it most likely will die. Senator Stevens' bill on supplemental retirement already includes the tax-deferred concept. Also, Senator Tribble's bill would apply to all Federal employees, including those covered by Civil Service; the cost to the Federal government of this benefit precludes giving it serious consideration.

3. As discussed in OLL 85-0363/1 dated 19 February, Senator Stevens wants to include all special retirement groups in one piece of legislation. Department of State representatives will meet with the Senator's Special Counsel on this question next Tuesday.

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OLL:LD :aw (20 February 1985)

99TH CONGRESS
1ST SESSION

S. 202

To amend title 5, United States Code, to establish a cash or deferred arrangement permitting Federal employees to save for their retirement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1985

Mr. TRIBLE (for himself and Mr. SYMMS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Code, to establish a cash or deferred arrangement permitting Federal employees to save for their retirement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees Cash
4 or Deferred Arrangement Act of 1985".

5 SEC. 2. (a) Section 8343 of title 5, United States Code,
6 is amended to read as follows:

7 "§ 8343. Cash or deferred arrangement

8 "(a)(1) The Office of Personnel Management shall estab-
9 lish a cash or deferred arrangement that satisfies the require-
10 ments of paragraph (2) of this subsection.

1 “(2) A cash or deferred arrangement satisfies the re-
2 quirements of this paragraph if, under the arrangement—

3 “(A) any employee or Member who is subject to
4 this subchapter may elect, in accordance with the pro-
5 visions of this section—

6 “(i) to defer receipt of a designated portion of
7 the employee’s or Member’s pay,

8 “(ii) to have the deferred portion contributed
9 directly to the Fund to be credited to an account
10 established in the Fund for the employee or
11 Member, and

12 “(iii) to have the employing agency of the
13 employee or Member make contributions with re-
14 spect to the employee or Member as provided in
15 subsection (b) of this section; and

16 “(B) the amounts credited to the account of the
17 employee or Member that are attributable to the con-
18 tributions made by the employing agency as provided
19 in such subsection are not distributable to the employee
20 or Member earlier than the date of the employee’s or
21 Member’s retirement, death, disability, separation from
22 the service, or attainment of age 59½ years, or for
23 reasons of hardship, and are not distributable merely
24 by reason of the completion of a stated period of par-

1 ticipation in the arrangement or by reason of the lapse
2 of a fixed number of years.

3 “(b)(1) In accordance with regulations prescribed by the
4 Office, an employee or Member may designate the portion of
5 pay the employee or Member elects to defer under the cash
6 or deferred arrangement, up to a maximum of 5 percent of
7 employee’s or Member’s basic pay. The employing agency
8 shall deduct and withhold the designated portion from the
9 pay of the employee or Member and shall deposit the
10 amounts withheld, together with an equal amount contributed
11 by the employing agency, in the Treasury of the United
12 States to the credit of the Fund.

13 “(2)(A) Except as provided in subparagraph (B) of this
14 paragraph, the contribution made with respect to an employ-
15 ee by the employing agency under paragraph (1) of this sub-
16 section shall be paid from the appropriation or fund used to
17 pay the employee.

18 “(B) The contribution made by an employing agency
19 under such paragraph—

20 “(i) with respect to a Member, shall be paid from
21 an appropriation or fund available for payment of other
22 salaries of the Member’s office or establishment; or

23 “(ii) with respect to a congressional employee
24 who is paid by the Clerk of the House of Representa-

1 tives, shall be paid from the contingent fund of the
2 House.

3 “(c) Except as provided in subsection (g) of this section
4 and subject to section 8348(c) of this title (relating to invest-
5 ment of sums in the Fund) and subsection (e) of this section
6 (relating to loans of sums in the Fund), the amounts credited
7 to the account of an employee or Member as contributions
8 under subsection (b) of this section and the earnings from
9 investment of such amounts under such section 8348(c) or
10 from loans made from such amounts under such subsection (e)
11 shall be held in the Fund as the property of the employee or
12 Member until distributed to the employee or Member, or to a
13 survivor under subsection (d) of this section, upon application
14 made in accordance with regulations issued by the Office.

15 “(d) In the event of the death of the employee or
16 Member, the amount held in the Fund to the credit of the
17 employee or Member under this section shall be paid in the
18 same manner as a lump-sum benefit under section 8342(c) of
19 this title.

20 “(e) The Office may by regulation permit loans bearing
21 reasonable rates of interest to be made to employees or Mem-
22 bers from amounts contributed under this section, to the
23 extent that such loans would not be—

24 “(1) prohibited transactions under section 4975 of
25 the Internal Revenue Code of 1954 if the cash or de-

1 ferred arrangement under this section were a plan as
2 defined in subsection (e)(1) of such section 4975; or

3 “(2) creditable as distributions under section 72(p)
4 of the Internal Revenue Code of 1954 if the cash or
5 deferred arrangement under this section were a quali-
6 fied employer plan referred to in such section 72(p).

7 “(f) The Office may, by regulation, permit an employee
8 or Member, or the survivor of an employee or Member, at the
9 time of eligibility for an annuity under this subchapter, to
10 purchase an additional annuity with the amount then held in
11 the Fund to the credit of the employee or Member under this
12 section or a designated portion of such amount. The amount
13 of the additional annuity shall be determined actuarially on
14 the basis of the employee's, Member's, or survivor's age, but
15 without regard to sex. The additional annuity shall include
16 actuarially determined survivor benefits for survivors of an
17 employee or Member in accordance with regulations that are
18 prescribed by the Office and are consistent with the other
19 provisions of this subchapter, including section 8339(k).

20 “(g) The Office shall determine the amounts necessary
21 to defray the expenses incurred by the Office in the adminis-
22 tration of this section and shall deduct from the amount cred-
23 ited to the account of each employee or Member in the Fund
24 a pro rata share of such administrative expenses. The amount

1 of the pro rata share shall not exceed 1 percent of the
2 amount credited to such account.

3 “(h) The Office may contract for administrative services
4 to administer the provisions of this section, without regard to
5 the provisions of title III of the Federal Property and Admin-
6 istrative Services Act of 1949 (41 U.S.C. 251 et seq.) or of
7 any other law requiring competitive bidding.

8 “(i) For purposes of the Internal Revenue Code of
9 1954—

10 “(1) any amount of the employee's or Member's
11 pay which is deferred and contributed to the Fund and
12 the amount of the employing agency's matching contri-
13 butions shall not be included in the gross income of the
14 employee or Member, and

15 “(2) any account established in the Fund under
16 this section on behalf of any employee or Member shall
17 be treated, for purposes of determining when amounts
18 in the account are included in income, in the same
19 manner as other amounts in the Fund.”.

20 (b) The item relating to section 8343 in the table of
21 sections at the beginning of chapter 83 of title 5, United
22 States Code, is amended to read as follows:

“8343. Cash or deferred arrangement.”.

23 (c) Section 8340(d) of title 5, United States Code, is
24 amended by striking out “by voluntary contributions” and
25 inserting in lieu thereof “under section 8343(f) of this title”.

1 (d) Section 8342(h) of title 5, United States Code, is
2 amended by striking out "a voluntary contribution for the
3 purpose of" and inserting in lieu thereof "an amount contrib-
4 uted under".

5 (e) Section 8348(a)(1)(B) of title 5, United States Code,
6 is amended by striking out "section 8340 of this title" and
7 inserting in lieu thereof "section 8340 of this title, in admin-
8 istering section 8343 of this title (including expenses con-
9 tracted for under section 8343(h)),".

10 SEC. 3. (a) The amendments made by section 2 shall
11 take effect on such date as the Director of the Office of Per-
12 sonnel Management may determine, but not later than 1 year
13 after the date of enactment of this Act.

14 (b)(1) Except as provided in paragraph (2), any volun-
15 tary contributions made under section 8343 of title 5, United
16 States Code, as in effect before the effective date of the
17 amendments made by section 2, and any additional annuities
18 purchased under such section before such effective date, shall
19 not be affected by such amendments.

20 (2) An employee or Member of Congress who has made
21 voluntary contributions under section 8343 of such title as in
22 effect before the effective date of the amendments made by
23 section 2, and has not yet purchased an additional annuity
24 under such section may elect to have the amount of such
25 voluntary contributions credited to the employee's or Mem-

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1 ber's account in the Civil Service Retirement and Disability
2 Fund as if the employee or Member had contributed such
3 amount (on the date of the election) under section 8343 of
4 title 5, United States Code, as amended by section 2. Such
5 deposit to the employee's or Member's credit shall not be
6 deemed a distribution for the purposes of the Internal Reve-
7 nue Code of 1954. Amounts designated by an election under
8 this paragraph shall be credited and administered in accord-
9 ance with the election.

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CONGRESSIONAL RECORD — SENATE

January 21, 1985

scribed in this paragraph, recognizing, however, the need to maintain rates at reasonable levels where there is market dominance as defined in section 10709(a)."

Sac. 4. Section 10707(a)(2)(B) of title 49, United States Code, is amended by inserting "and changes in railroad productivity, volume and output mix" after "labor" in the parenthetical clause.

Sac. 5. (a) Section 10709(d)(2) of title 49, United States Code, is amended to read as follows:

"(2) In making a determination under this section, the Commission shall find that the rail carrier establishing the challenged rate has market dominance over the transportation to which the rate applies if—

"(A) the rate charged results in a revenue-variable cost percentage for such transportation that is more than the cost recovery percentage during each 12-month period beginning on or after October 1, 1984; and either

"(B) within the 12-month period immediately preceding the beginning of such determination process, more than 70 percent of the transportation to which the challenged rate applies was by railroad; or

"(C) a shipper, with respect to the transportation of whose property the challenged rate applies, has made a substantial investment in railroad equipment or rail-related plant which prevents or makes impracticable the use of a mode of another rail carrier or transportation other than railroads.

For purposes of subparagraph (A) of this paragraph, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than a revenue-variable cost percentage of 180 percent."

(b) Section 10709(d) of such title is amended by adding the following new paragraph at the end thereof:

"(6) No person, class of persons, transaction, or service may be exempted by the Commission under section 10505 of this title from the application of a provision of this subtitle with respect to any transportation unless a rail carrier is determined under this section not to have market dominance over such transportation, unless such transportation is pursuant to a contract entered into under section 10713 of this title."

(c) Section 10709 of such title is amended by adding the following new subsection at the end thereof:

"(e) In determining the existence or absence of effective competition for purposes of this section, the Commission shall consider only transportation competition for movement of the same commodity from the same point of origin to the same destination."

Sac. 6. Except as otherwise provided, the Commission shall conclude a proceeding to establish procedures for the implementation of the amendments made by this Act within 180 days after the date of enactment of this Act.

By Mr. TRIBLE (for himself and Mr. STROMS):

S. 202. A bill to amend title 5, United States Code, to establish a cash or deferred arrangement permitting Federal employees to save for their retirement, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL EMPLOYEES CASH OR DEFERRED ARRANGEMENT ACT OF 1985

Mr. TRIBLE. Mr. President, one of the most important issues confronting the 99th Congress is deficit reduction. This Congress faces the enormous responsibility of finding ways to reduce

the \$200 billion Federal deficit, and all areas of the Federal budget will be examined for ways to restrain Federal spending and reduce the deficit.

Already, proposals have been offered to reduce Federal spending by drastically reducing civil service retirement benefits for Federal workers. Lower annuities and higher employee contributions are among the suggestions. Federal employees hired after December 31, 1983, have faced uncertain retirement benefits since joining the Federal work force. These employees are covered under Social Security and a supplemental retirement system which is still not designed. Congress must establish this system by the end of 1985.

Many employers outside the Federal Government offer their employees the opportunity to participate in tax-sheltered retirement programs. And increasingly, employers are offering deferred compensation plans authorized by section 401(k) of the Internal Revenue Code.

These plans allow an employee to elect to defer a portion of his or her salary and have the employer deposit that amount into an investment or savings account. The amount of the deferred salary, any employer contributions to the account, and investment earnings, are tax-exempt until the employee withdraws the funds. Funds may be withdrawn from these accounts only when the employee retires, dies, becomes disabled, separates from the service, reaches age 59½, or for reasons of hardship.

These tax-deferred accounts allow employees to save money for use in their retirement years. And, employees have the opportunity to determine, within a range, the amount of their salary that they wish to defer.

I believe that Federal employees should be given the opportunity to plan for the future and save for their retirement. That is why I am introducing legislation which would allow Federal employees to participate in tax-sheltered deferred compensation plans comparable to plans offered to their non-Federal counterparts.

My legislation would permit an employee to set aside up to 5 percent of his or her basic pay under the cash or deferred arrangement. The employing agency will be authorized to deduct and withhold that portion of the employee's pay and deposit that amount, along with an equal amount contributed by the agency, into an account.

Funds may be withdrawn from the account only in those instances outlined in section 401(k) of the Internal Revenue Code: upon the employee's retirement, death, disability, separation from the service, attainment of ages 59½, or for reasons of hardship. In addition, employees participating in the cash or deferred arrangement may be able to qualify for a loan which can be repaid through payroll deductions.

January 21, 1985

The Congress must design a new retirement program for Federal workers who were hired after December 31, 1983. I believe that this new plan should include this deferred compensation plan. A Federal retirement program consisting of Social Security, pension plan, and a capital accumulation plan such as the deferred compensation plan authorized by section 401(k) of the Internal Revenue Code would be consistent with retirement programs typically available to employees outside the Federal sector.

Mr. President, in the wake of uncertainty with future retirement benefits for Federal workers, we should provide civil servants with the opportunity to elect to defer payment of a portion of their salary in order to set aside money for use in their retirement years. I urge my colleagues to join with me in pressing for consideration of this measure.

By Mr. DIXON:

S. 203. A bill to provide a one-time amnesty from criminal and civil tax penalties and 50 percent of the interest penalty owed for certain taxpayers who pay previous underpayments of Federal tax during the amnesty period, to amend the Internal Revenue Code of 1954 to increase by 50 percent all criminal and civil tax penalties, and for other purposes; to the Committee on Finance.

FEDERAL TAX DELINQUENCY AMNESTY ACT OF 1985

Mr. DIXON. Mr. President, the Federal budget deficit in fiscal year 1985 was an appalling \$175 billion. The latest estimate for the fiscal 1985 deficit prepared by the President's Office of Management and Budget is even worse—\$205 billion. This ongoing budget crisis, however, seems to demand the efforts of Congress and the President to end it. Budget deficits are under control in spite of the major efforts to cut spending over the past years, and in spite of the passage of two major tax increase bills in the 3 years.

There are a lot of reasons for the budget crisis. One very important reason that has not received anywhere near the attention it deserves has to do with tax compliance levels.

In 1981, the most recent year for which comprehensive data is available, Federal tax collections were more than \$81 billion below what they would have been if every taxpayer paid his or her legal tax obligation. Individual taxpayers failed to report to the Internal Revenue Service almost \$250 billion in income tax.

Unfortunately, 1981 is not an unusual year. The "tax gap" was more than \$28 billion in 1973, or approximately double the Federal budget deficit of \$14 billion that year, and it has increased steadily since then. The Treasury Department is estimating a gap of between \$89 and \$92 billion in 1985, and believes that level could